

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIME SQUARE CONSTRUCTION, INC.

Plaintiff,

- against -

07-CV-7250  
(SAS)(AJP)

MASON TENDERS DISTRICT COUNCIL OF  
GREATER NEW YORK & LONG ISLAND  
AND GENERAL  
LABORERS JATC, LOCAL UNION NO. 79,

Defendants.

-----X

**DEFENDANTS' REPLY MEMORANDUM OF LAW**

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

Lowell Peterson, Esq. (LP 5405)  
1350 Broadway, Suite 501  
New York, New York 10018  
(212) 239-4999

MASON TENDERS DISTRICT COUNCIL  
OF GREATER NEW YORK

Tamir W. Rosenblum (TR 0895)  
Haluk Savci (HS 0853)  
520 Eighth Avenue, Suite 650  
New York, New York 10018  
(212) 452-9451

Attorneys for Defendants

## TABLE OF CONTENTS

PRELIMINARY STATEMENT .....	1
STATEMENT OF FACTS .....	2
ARGUMENT .....	11
I.    The Legal Standards .....	12
A.    Joint Employer .....	13
B.    Single Employer .....	15
i.    Single Employer Factors .....	16
ii.   Appropriate Bargaining Unit .....	20
C.    Alter Ego .....	22
II.   Enforcing Albanese's Rights .....	23
CONCLUSION .....	25

## TABLE OF AUTHORITIES

### CASES

<u>Brown v. Dominic Prisco Transport, Inc.</u> , 1997 U.S. LEXIS 23709 (EDNY 1997) .....	21
<u>Browning-Ferris Industries</u> , 691 F.2d 1117, 1122 (3 <sup>rd</sup> Cir. 1982) .....	13
<u>Boire v. Greyhound Corp.</u> , 376 U.S. 473, 481 (1964).....	13
<u>Bonita Nurseries</u> , 326 NLRB 1164 (1998) .....	15
<u>Bourgal v. Robco Contracting Enterprises, Ltd.</u> , 969 F. Supp. 854, (EDNY 1997) .....	21
<u>Canned Foods, Inc.</u> , 332 NLRB 1449 (2000) .....	19
<u>Charles D. Bonanno Linen</u> , 454 U.S. 404, 412 (1982).....	22
<u>Clinton’s Ditch Cooperative Co., Inc. v. NLRB</u> , 778 F2d 132 (2 <sup>nd</sup> Cir. 1985) <u>cert.denied</u> , 479 U.S. 814 (1986) .....	12, 16
<u>Fuchs v. Cristal Concrete Corp.</u> , 2006 U.S. Dist. LEXIS 48767 (EDNY 2006).....	16
<u>Goodman Piping Products, Inc. v. NLRB</u> , 741 F.2d 10, 11 (2 <sup>nd</sup> Cir. 1984) .....	22, 23
<u>Hahn Motors, Inc.</u> , 283 NLRB 901, 901 (1987) .....	23
<u>Hill Industries</u> , 320 NLRB 1116 (1996) .....	23
<u>ICC Air Services Corp.</u> , 316 NLRB 395 (1995) .....	19

# TABLE OF AUTHORITIES (Continued)

<u>Jacobson v. Metropolitan Switchboard Company, Inc.</u> , 2007 U.S. Dist. LEXIS 43901 at *18 (EDNY 2007).....	22
<u>John Deklewa &amp; Sons</u> , 843 F.2d 770, 781 n. 13 (3 <sup>rd</sup> Cir. 1988), <u>cert. denied</u> , 488 U.S. 889 (1988) .....	22
<u>Lihli Fashions Corp. v. NLRB</u> , 80 F.3d 743 (2 <sup>nd</sup> Cir. 1996).....	13, 16, 22
<u>Longstreet Associates, L.P. v. Bevona</u> , 16 F. Supp. 2d 290, (SDNY 1998).....	15, 24
<u>Naperville Ready Mix, Inc. v. NLRB</u> , 242 F.3d 744 (7 <sup>th</sup> Cir. 2001) .....	16
<u>Newmark &amp; Lewis, Inc. v. IBT Local 814</u> , 776 F. Supp. 102 (EDNY 1991) .....	15
<u>NLRB v. Al Bryant, Inc.</u> , 711 F.2d 543, (3 <sup>rd</sup> Cir. 1983), <u>cert. denied</u> , 464 U.S. 1039 (1984)).....	16
<u>NLRB v. Browning-Ferris Industries of Pennsylvania, Inc.</u> , 691 F.2d 1117, 1123-1124 (3 <sup>rd</sup> Cir. 1982).....	13
<u>Nw. Ohio Adm’rs Inc. v. S.E.A. Builders Corp.</u> , 183 F. Supp. 2n 991 (ND Ohio 2002).....	14
<u>Prospect Lefferts Garden Neighborhood Assn.</u> , 269 NLRB 670 (1984) .....	14
<u>Radio &amp; Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.</u> , 380 U.S. 255, 256 (1965).....	16

## STATUTES

380 U.S. 255, 256 (1965).....	16
-------------------------------	----